

(1961) 03 KL CK 0012

In the High Court Of Kerala

Case No : Contempt Application No. 12 of 1960

Sankaranarayana Panicker

APPELLANT

Vs

Unni Omana and Others

RESPONDENT

Date of Decision : 15-03-1961

Acts Referred:

Contempt of Courts Act, 1971 — Section 1

Citation : AIR 1962 Ker 52

Hon'ble Judges : M.A. Ansari, C.J; M. Madhavan Nair, J

Bench : Division Bench

Advocate : P. Govinda Menon, P.K. Krishnakutty Menon, P. Raman Menon and P. Narendra Menon, for the Appellant; K.V. Surianarayana Ayyar and C.M. Devan, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair, J.—This is an application by the plaintiff in a civil suit, for action to be taken under the Contempt of Courts Act (32 of 1952) against the respondents who are some of the defendants in that suit.

The applicant is the son, and the respondents, five of the members of the family of the late Kunnathat Matambil Thathunni Moopil Nair, Mannarghat, who died on 4th January 1960. The said Moopil Nair had executed a will on 10th July 1958 bequeathing inter alia all the properties attached to the Mannarghat Moopil Sthanam to big wife and children. A testamentary disposition of the entire Sthanam properties being inconsistent with the provisions of Section 7(3) of the Hindu Succession Act, 30 of 1956, the members of his family challenged his competency to execute the will, whereupon the applicant, along with the testator and the other legatees, instituted a suit for declaration of the validity of the aforesaid will; and it is pending as O. S. No. 1 of 1960 in the Court of the Subordinate Judge, Ottapalam.

2. On 17th August 1960 the 1st respondent published a notice in the Malayalam

daily "Mathrubhumi" a copy of which is produced as Ext. P.2. It reads (on translation) thus :

"MANNARGHAT STHANAM ESTATE NOTICE

On January 3, 1980, Shri Thathunni Moopil Nair who was the seniormost member of our family passed away. With his demise, the Sthanam properties have devolved on all the members of his family and his wife and children in tenancy-in-common. But Shri Kunjunni Elaya Nair, holding himself out both as Elaya Stani and Moopil Stani and assuming a right to deal with these properties according to his will and pleasure, is trying to collect rents and make contracts. There is no proper management of the properties. And, it is reported that people are trespassing into the forests and unlawfully felling trees therein.

To check this state of affairs and to manage the properties properly till they are divided according to law, the members of the Swaroopam have by an agreement in writing constituted a managing committee consisting of K. C. Kochunni Nair, as President and K. M. Ramanunni Nair, K. M. Kunjanunni Nair, K. C. Gopalanunni and K. M. Madhavanunni as members. Shri Kunhunni Nair alone was not prepared to co-operate in this and has not joined the committee or been a party to the agreement. The committee met at "Satyamandiram" Mannarghat, on 6th August 1960 and appointed agents according to the usual practice. M V. Sankaran Nair has been appointed as manager All tenants and other persons holding under contracts with the Estate are hereby informed that all rents, michavarams, customary payments and other dues should be paid to the above-mentioned agents under receipts bearing my signature and the seal of the Estate. It is also notified that neither myself nor the other members of the Swaroopam will be answerable for any payment made without taking a receipt as mentioned above.

The office of the committee has been Opened at Satyamandiram".

K. C, KOCHUNNY NAIR,

President,

Managing Committee"

The President and members of the Managing Committee mentioned, in the above notification are the respondents to this application; and they are defendants Nos. 3, 5, 7, 17 and 18 in the above-mentioned suit.

3. According to the applicant the above notice "is likely to prejudice the fair trial of the suit" and therefore amounts to an act of contempt.

Notice to show cause was ordered on this application, and the respondents have entered appearance through counsel. In their affidavits they have stated that the notification was issued only with a view to preserve the Sthanam properties which have devolved on the members of the family and the personal heirs of the testator in co-ownership by virtue of the Hindu Succession Act, that the same did

not amount to contempt of Court and that if the Court finds that it amounts to contempt the respondents tender their unconditional apology therefor.

4. The learned counsel for the applicant read our ruling in *Kayiath Damodaran Vs. Induchoodan and Others*, where we have held ;

"It is well settled that abusing and vilifying parties to a pending proceeding in relation to the proceeding, amounts to contempt ...;..... The law of contempt guards a party to litigation against being misrepresented, provided the misrepresentation be of the party in relation to the proceedingsMisrepresenting a party to a litigation prejudices the public mind against him, and it does not enable him to prosecute his case with safety of his character." .

The act impugned in that case was a publication deliberately designed to prejudice mankind against the accused in a criminal case and the imputation was one affecting his personal character. The notification in the present case bears no parallel thereto.

5. Reliance was also placed on the rulings reported in AIR 1948 131 (Oudh) and *Rex Vs. Mohd. Etizad Rasul Khan*, in support of the applicant's stand. In the Oudh case, while suits were pending between the parties regarding title to the land concerned, a notice was published by one of them informing the public that the involved lands belong to him and that anybody entering into any transaction in respect of the land with the opposite party would be doing so at his risk. Upon an application by the party affected by the notice for proceedings in contempt against the party who issued the notice. I was held :

"..... .The action of the opposite parties in publicizing the assertion of title while the matter is sub judice amounts to contempt of court. The only other question is whether the action of the opposite parties is such that there is real prejudice caused by the assertion of that title and it amounts to a substantial interference with the due course of justice. We think that it does."

In the Allahabad case, "the action of a party making collections of rent from the tenants on the allegation, that he was the nephew of the late Maharaja and entitled to succeed to the Jahangirabad estate as against "the defendants who were mere imposters" while a suit with regard to the title to the estate was pending between the parties, was said to constitute contempt. The learned Judges observed :

"It appears to us that the grave consequences which must follow on the act and conduct of the plaintiff in making the collections and publicising his title in negation of the title of the defendants amounts to a deliberate contempt and it should not be allowed to go unpunished simply because the defendants can make their loss good by filing suits for rent against those who have paid rents to the plaintiff The plaintiff's denial of the crucial facts was designed to beguile the real facts and to hide a well thought out plan for prejudicing a fair trial

of the succession dispute. We hold that K. Mohammad Etizad Rasu Khan is guilty of contempt of Court."

We do not feel happy to go the entire length of the dicta in the above rulings and would like to keep somewhat aloof of the rigour of the law laid down therein.

6. Oswald defined contempt of Court in these words : "To speak generally, contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice the parties litigant or their witnesses doing the litigation."

Lord Hardwicke, L. C., observed three different sorts of contempt. One kind of contempt as scandalising the court itself. There may be likewise a contempt of the court, in abusing parties who are concerned in causes in that court. There may also be a contempt of court in prejudicing mankind against persons before the cause is heard.

To the same effect are the observations of our Supreme Court in *Rizwan-ul-Hasan and Another Vs. The State of Uttar Pradesh*, .

Interference with the administration of Justice and prejudicing mankind against a person before his cause is heard are therefore well recognised heads of contempt.

7. It may be essential for the proper maintenance of the rule of law that the court should have ample powers to protect itself from abuse of itself and its procedure and that residuary powers should be retained by courts to ward off any interference with their process. But if every statement on any matter which is sub judice is to be viewed as contempt of Court that would create "an unwarrantable shackle" on the Freedom of Expression which is the guarantee of good government in a democratic country. In considering whether an act is contempt it is desirable, therefore, to balance, on the one hand, the effect it might have on the litigation and, on the other, the interest of the nation. In free expression, Courts owe a duty to the public that fundamental liberties of the public are not encroached by the courts themselves.

8. Lord Goddard, in *AIR 1945 134 (Privy Council)* , observed :

"Their Lordships would once again emphasise what has often been said before that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised."

Recently a Committee presided over by the Right Hon^{ble} Lord Shawcross has observed:

"Where there is no serious interference with the administration of justice or where on balance there is a benefit to the public interest in the widest sense there should be no proceedings at all, or if there are proceedings there should be no conviction"

Our Supreme Court also has observed in *Rizwan-ul-Hasan and Another Vs. The State of Uttar Pradesh*, :

"The jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice and that the purpose of the Court's fiction is a practical purpose and it is reasonably clear on the authorities that the Court will not exercise its jurisdiction upon a mere question of propriety."

It is clear therefore that the court should not convict unless it considers that substantial and unjustifiable interference with the course of justice has occurred in the impugned act

9. The question therefore is whether the impugned notification does substantially prejudice a fair trial of the applicant's suit.

10. In the notice, the respondents have, only said that under law they have become co-sharers of the properties on the demise of the Sthanamdar and that the members of the Sthanamdar's family would not be answerable to tenants for payments made by them otherwise than under receipt of the managing committee appointed by them. We are unable to appreciate how such a notice would prejudice the fair trial of a suit for declaration of the testamentary capacity of the Sthanamdar to bequeath the entire sthanam properties to his wife and children.

The reliefs claimed in the suit are:

"(A) that the Honourable Court be pleased to pass a decree declaring the will executed by the 1st plaintiff in favour of plaintiffs 2 to 6 on 10th July 1958 to be perfectly valid and binding on the plaintiff properties;

(B) that defendant 2 onwards be directed to give the plaintiffs the costs of this suit;

(C) that the Honourable Court be pleased to grant such further or other reliefs as are deemed fit and claimed by plaintiffs."

A right to the rents and profits of the Sthanam estate is not directly in issue in the case; nor are any of the tenants concerned made parties to the suit. In the circumstances to notify that payments made by tenants to the legatees of the Sthanamdar who claim the entire rents and profits of the estate for themselves may not be binding on the members of the Sthanamdar's family appear to us to be absolutely innocuous or even justified. In view of Section 7(3) of the Hindu Succession Act 30 of 1956, the assertion of the respondents to have become co-sharers of the Sthanam properties and as such entitled to a share of the rents and profits thereof cannot be wanting in bona fides; but that need not be considered here. Suffice it to say for our present purpose that there is nothing in the impugned notification that would prejudice the trial of the suit which relates only to the testamentary capacity of the Sthanamdar in regard to the entirety of

the Sthanam estate.

11. We do not therefore find anything in the notification that would amount to a contempt. Probably, the party would have been better advised if he moved for an injunction to restrain the applicant and other legatees from collecting the entire rents and profits of the estate or for a receiving order in regard to such rents and profits. But on the whole, the mere act of their publishing a notice of the type of Ext. P-2 cannot be said to amount to a contempt of Court. This being our view, we discharge the notice issued to the respondents in this case and dismiss the application, with costs, inclusive of counsel's fee, Rs. 100.